



Signed and Filed: July 08, 2011

A handwritten signature in cursive script, reading "Dennis Montali", is written over a horizontal line.

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
SHAWN DOLGIN,) No. 11-31091DM
Debtor.) Chapter 13

MEMORANDUM DECISION ON MOTION TO DISMISS

I. INTRODUCTION

On June 15, 2011, the court considered the motion of David Teter and Kathleen Miller ("Moving Parties") to dismiss this Chapter 13 case filed by Shawn Dolgin ("Debtor") on March 21, 2011.

For the reasons discussed below, Moving Parties' motion will be granted and Debtor's case will be dismissed.

II. DISCUSSION

The court considers the propriety of Debtor's Chapter 13 case under a "totality of circumstances" test and concludes that Debtor filed this case in bad faith.

First, as the record reflects, Debtor used the threat of bankruptcy as an offensive weapon in connection with his litigation with Moving Parties in state court. While frequently debtors file bankruptcy in good faith on the eve of trial or entry

1 of judgment, in this case Debtor filed to avoid discovery after
2 threatening bankruptcy as an alternative to an unrealistic
3 proposal for mediation that could not have been serious since
4 Moving Parties' counsel's affirmative response was not accepted by
5 Debtor.

6 Apart from Debtor's litigation conduct, it appears that he is
7 quite able to deal with his few creditors outside of bankruptcy.
8 Specifically, he has substantial assets (admittedly some of which
9 are exempt but still are not insignificant) and those assets
10 include luxury goods, jewelry, and nearly a quarter of a million
11 dollars of funds in various pension and profit sharing accounts.
12 Further, he has a substantial income to meet expenses that include
13 \$462 per month repaying his own "403B loan." That is not a proper
14 charge against disposable income. See In re Egebjerg, 574 F.3d
15 1045(9th Cir. 2009).

16 Given those circumstances, Debtor's unsecured non-priority
17 claims are well within his control to pay.

18 Finally, Debtor's plan proposes a modest payment of \$100 per
19 month for sixty months, an amount that does not appear to be his
20 best efforts but rather a way to attempt to avoid his day of
21 reckoning with Moving Parties. If he defeats them in state court,
22 the absence of a need for bankruptcy relief is all the more
23 apparent. If Moving Parties prevail, Debtor may revisit the
24 question of whether or not he should be entitled to bankruptcy
25 relief.

26 III. CONCLUSION

27 For the foregoing reasons, this Chapter 13 case will be
28 dismissed. The court is concurrently entering an order dismissing

1 this case.

2 **END OF MEMORANDUM DECISION**

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